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IN THE

Supreme Court of the United States

OCTOBER TERM, 1945

No. 323

INSULAR SUGAR REFINING CORPORATION,
Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT THEREOF

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INDEX

PAGE

Petition for Writ of Certiorari:

Statement of Matter Involved 1
Statutes 2
Question Presented 2
Reasons for the Allowance of the Writ 2

Brief in Support of Petition for Writ of Certiorari:

I. Opinion of the Court Below 5

II. Jurisdiction 5

III. Statutes and Regulations Involved 5

IV. Statement of the Case 5

V. Specifications of Errors 6

VI. Summary of Argument 6

Argument:

POINT I—The imposition of an unjust enrichment tax on "drawbacks" is inconsistent with the intent of the Congress in providing for the payment of drawbacks and contrary to its expressed intent in enacting the Unjust Enrichment Tax Law 7

POINT II—Petitioner is entitled to exemption under Section 501(b) of the Unjust Enrichment Tax Law 10

(a) The statutory provision imposing the unjust enrichment tax specifically exempts repayments to taxpayers entitled to the refund otherwise than as an illegal collection 10

(b) Petitioner comes within the exempt class ... 11

Conclusion 14

Appendix 15

Table of Cases Cited

PAGE

Campbell, et al. v. U. S., 107 U. S. 407 ..... 2, 8
Cudahy Bros. v. LaBudde, 92 F. (2d) 937 (cert. den. 303 U. S. 659) 2, 8, 9

Other Authorities Cited

Agricultural Adjustment Act
Section 17(a) 2, 3, 6, 7, 8, 11

California Civil Code, Div. III, Part 4, Title 1, Chapter 2, Article 1, Section 1739 (Hillyers Consolidated Supplement to the California Code 1927-1931, Part 1, p. 5538) 11

Judicial Code, as amended by the Act of February 13, 1925 (U. S. C. A., Title 28, Section 347, 42 Stat. 938)
Section 240(a) 5

Regulations 83, Art. 3 11

Report of Senate Finance Committee, Senate Report No. 2156, pages 25-26 10

Revenue Act of 1936
Section 501(b) 2, 6, 10, 11, 12, 13, 14
Section 601 8
Section 601(a) 8

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

Insular Sugar Refining Corporation prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Second Circuit, entered in the above entitled cause on June 11, 1945, affirming in part a decision of the Tax Court of the United States.

Statement of the Matter Involved

The Circuit Court of Appeals, *by a divided Court,* affirmed a decision of the Tax Court, holding certain "drawbacks" of processing taxes subject to unjust enrichment tax and deciding that the burden was on the petitioner to show that it had not passed on these taxes.

Statutes

The Statutory provisions involved, Section 17(a) of the Agricultural Adjustment Act and Section 501(b) of the Revenue Act of 1936, are set forth in the Appendix at pages 15 and 17, respectively.

Question Presented

Were "drawbacks," paid to an exporter pursuant to the Agricultural Adjustment Act, subject to unjust enrichment tax?

Reasons for the Allowance of the Writ

1. The Circuit Court of Appeals for the Second Circuit has decided a Federal question in a way probably in conflict with the applicable decisions of this Court. In *Campbell, et al.* v. *U. S.*, 107 U. S. 407, and the cases which follow it, this Court decided that "drawbacks" are provided by Congress to exempt exports from taxation, and when the taxed article is exported, the United States becomes bound to pay the drawback to the exporter. The decision of the Court below interpreting the applicable statutory provisions as requiring the imposition of an 80% unjust enrichment tax on such "drawbacks" cannot be reconciled with those decisions.

2. The decision of the Court below is in conflict with the decision of the Circuit Court of Appeals for the Seventh Circuit in *Cudahy Bros.* v. *LaBudde*, 92 F. (2d) 937 (certiorari denied, U. S. 303, 659). In that case it was pointed out that Section 17(a) of the Agricultural Adjustment Act was re-enacted by Congress as part of the Revenue Act of 1936 with the intent to preserve the exemption

of exports from tax and to confirm the authority of the Commissioner of Internal Revenue to continue paying the "drawbacks" pursuant to that section after the Agricultural Adjustment Act was held unconstitutional. *Contrary to the decision of the Court below,* the Court in that case held that this legislative intent precluded a construction of the Revenue Act which would make "drawbacks" under Section 17(a) subject to the provisions of the Revenue Act applicable to refunds of taxes illegally collected, requiring that a claimant prove that he had not passed on the tax, etc.

WHEREFORE, this petitioner prays that a writ of certiorari be issued directed to the U. S. Circuit Court of Appeals of the Second Circuit, requiring that this cause be certified to this Court for review and determination of all errors assigned.

INSULAR SUGAR REFINING CORPORATION

By J. STERLING HALSTEAD